



West Virginia E-Filing Notice

CC-20-2025-C-302

Judge: Carrie Webster

To: Stephen Hastings
shastings@handl.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Paul Painter v. Microbac Laboratories, Inc.

CC-20-2025-C-302

The following complaint was FILED on 3/4/2025 4:46:49 PM

Notice Date: 3/4/2025 4:46:49 PM

Cathy S. Gatson
CLERK OF THE CIRCUIT COURT
Kanawha County
P.O. Box 2351
CHARLESTON, WV 25301

(304) 357-0440

COVER SHEET**GENERAL INFORMATION**

IN THE CIRCUIT COURT OF KANAWHA COUNTY WEST VIRGINIA

Paul Painter v. Microbac Laboratories, Inc.**First Plaintiff:**☐ Business ☒ Individual
☐ Government ☐ Other**First Defendant:**☒ Business ☐ Individual
☐ Government ☐ Other**Judge:**

Carrie Webster

COMPLAINT INFORMATION**Case Type:** Civil**Complaint Type:** Contract**Origin:** ☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court**Jury Trial Requested:** ☒ Yes ☐ No **Case will be ready for trial by:** 11/3/2025**Mediation Requested:** ☐ Yes ☒ No**Substantial Hardship Requested:** ☐ Yes ☒ No☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

☐ I am proceeding without an attorney☒ I have an attorney: Stephen Hastings, PO BOX 11070 , CHARLESTON, WV 25339

SERVED PARTIES

Name: Microbac Laboratories, Inc.

Address: c/o Terri Cox 101 Bellevue Road, Suite 301, Pittsburgh PA 15229

Days to Answer: 30 **Type of Service:** Secretary of State - Certified - Including Copy Fee

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**PAUL PAINTER,****Plaintiff,****v.****CIVIL ACTION NO.: _____****MICROBAC LABORATORIES, INC.****Defendant,****COMPLAINT**

COMES NOW the Plaintiff, Paul Painter, by his counsel, Stephen E. Hastings, Esquire, and A. Luca Paternostro, Esquire, of the law firm of Hendrickson & Long PLLC, and for his Compliant hereby states and avers as follows:

PARTIES AND VENUE

1. Plaintiff, Paul Painter, ("Mr. Painter") is a resident of Kanawha County, West Virginia.
2. Defendant, Microbac Laboratories, INC., ("Microbac") is a Pennsylvania corporation licensed to and doing business in West Virginia, including Kanawha County, West Virginia, with its principal place of business located in Allegheny County, Pennsylvania
3. Venue and Jurisdiction over Microbac is proper pursuant to § 56-1-1 of the West Virginia Code because the defendant, Microbac, conducts business within this Kanawha County, West Virginia and Microbac entered into a contract (the "Agreement") with Mr. Painter within the State of West Virginia. Additionally, Mr. Painter, is a resident of West Virginia, and the cause of action arose in Kanawha County, West Virginia.

FACTS

4. Mr. Painter was employed by Mircobac pursuant to an Employment Agreement dated November 1, 2023 (“Agreement”).

5. Mr. Painter’s employment was to continue until November 7, 2027, unless terminated in accordance with the Agreement.

6. Under the Agreement, Mr. Painter received an annual base salary as well as certain fringe benefits, including a car allowance.

7. The Agreement also provided that Mr. Painter was eligible to participate in Microbac’s sale commission program which provided a bonus of 2% of any new sales Mr. Painter originated in excess of \$1.6 million.

8. At all times, Mr. Painter performed his job duties competently and satisfactorily, and never engaged in any conduct that would constitute “cause” for termination under the Agreement or otherwise justify his dismissal.

9. Microbac’s CEO, Trevor Boyce, acknowledged, in writing, that it takes time for a new sales person six months to begin to see real traction in landing new sales.

10. Because Mr. Painter was a new salesperson, he did not originate \$1.6 million during the first year of the Agreement.

11. Throughout his employment, Mr. Painter consistently received positive performance feedback, including numerous emails from management indicating he was 'doing well' and 'starting to heat up' in his sales role.

12. At no time prior to Mr. Painter’s termination did Microbac provide any written warnings, performance improvement plans, or indication that Mr. Painter's sales performance was deficient or grounds for termination.

13. On December 10, 2024, Microbac terminated Mr. Painter's employment, effective the same date.

14. Microbac stated that the termination was "for Cause" because Mr. Painter failed to meet an annual sales goal of \$1.6 million.

15. At no time did Microbac advise Mr. Painter that he had annual sales goal of \$1.6 million and that if he failed to meet such sales goal he would be subject to potential discipline or termination.

16. Section 4.1 of the Agreement specifically outlines the conditions and procedures for termination "for cause" including Microbac's obligation to provide Plaintiff with written notice of the alleged cause and a reasonable opportunity to cure any deficiencies prior to termination.

17. Microbac failed to afford Mr. Painter any opportunity to cure the alleged cause, as expressly mandated by Section 4.1 of the Agreement.

18. At the time of the termination, Mr. Painter was 64 years old.

19. Upon information and belief, Mr. Painter's job duties were replaced by Microbac with a substantially younger employee.

COUNT I
BREACH OF CONTRACT/WRONGFUL TERMINATION

20. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

21. Mr. Painter and Microbac are parties to a valid and enforceable contract.

22. Microbac's termination of Mr. Painter's employment was without cause.

23. Microbac's termination of Mr. Painter constitutes a wrongful termination and a breach of contract.

24. Microbac's failure to provide Mr. Painter any opportunity to cure any alleged "cause" under the Agreement constitutes a breach of contract.

25. Because Microbac had no cause to terminate Mr. Painter, the Agreement should have remained in effect until November 7, 2027.

26. As a direct and proximate result of Defendant's breach of the Agreement contract and wrongful termination, Mr. Painter has and will continue to suffer damages, including but not limited to lost wages, commissions, benefits, retirement contributions, health insurance coverage, other fringe benefits, emotional distress, annoyance, inconvenience and other economic and non-economic losses extending at least through the contract term of November 7, 2027.

COUNT II **AGE DISCRIMINATION**

27. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

28. Mr. Painter was 64 years old at the time Microbac terminated his employment.

29. Upon information and belief, Mr. Painter's job duties were replaced by Microbac with a substantially younger employee.

30. Mr. Painter was a member of a protected class of individuals over the age of 40 at the time of his discharge.

31. Mr. Painter's discharge was motivated in whole or in part by Microbac's intention to eliminate an older, more compensated employee in favor of a younger, less compensated employee.

32. The aforesaid age discrimination was inflicted upon Mr. Painter in direct violation of the West Virginia Human Rights Act, W.Va. Code § 5-11-1, *et seq.* and the public policy of the State of West Virginia.

33. Microbac's discriminatory acts and wrongful termination was wanton, willful, or malicious and justifies an award of punitive damages.

34. As a direct and proximate result of Microbac's discriminatory conduct, Plaintiff has and will continue to suffer damages, including but not limited to lost wages, commissions, benefits, retirement contributions, health insurance coverage, other fringe benefits, emotional distress, annoyance, inconvenience and other economic and non-economic losses.

WHEREFORE, Plaintiff demands judgment against Defendant and an award of economic and non-economic damages, punitive damages, attorney's fees and costs, pre-judgment and post-judgment interest and any further relief the Court may deem appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES.

PAUL PAINTER

By Counsel

/s/ Stephen E. Hastings

Stephen E. Hastings, Esquire (#9065)

A. Luca Paternostro, Esquire (#14666)

HENDICKSON & LONG, PLLC

214 Capitol Street (zip 25301)

P.O. Box 11070

Charleston, West Virginia 25339

304-346-5500

304-346-5515 (facsimile)

shastings@handl.com

lpaternostro@handl.com

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

PAUL PAINTER,

Plaintiff,

v.

MICROBAC LABORATORIES, INC.

Defendant.

CIVIL DIVISION

Case No. CC-20-2025-C-302

NOTICE OF APPEARANCE

NOTICE OF APPEARANCE

Kindly enter my appearance as counsel on behalf of Defendant Microbac Laboratories, Inc., in the above captioned matter.

Respectfully Submitted,


A handwritten signature in blue ink, appearing to read 'D. Falavolito', with a long horizontal line extending to the right.

Date: March 6, 2025

Dean F. Falavolito, Esquire
WV I.D. No. 9878
O'HAGAN MEYER
102 Broadway Street, Suite 200
Carnegie, PA 15106
(412) 790-3020
dfalavolito@ohaganmeyer.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Appearance was served upon all parties and their counsel of record by the Court's electronic filing system on this 6th day of March, 2025.

By: 
Dean F. Falavolito, Esquire

Dated: March 6, 2025



West Virginia E-Filing Notice

CC-20-2025-C-302

Judge: Carrie Webster

To: Dean Frederick Falavolito
dfalavolito@ohaganmeyer.com

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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The following supporting documents was FILED on 3/17/2025 3:39:40 PM

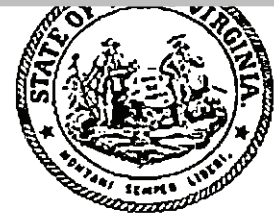
Notice Date: 3/17/2025 3:39:40 PM

Cathy S. Gatson
CLERK OF THE CIRCUIT COURT
Kanawha County
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CHARLESTON, WV 25301

(304) 357-0440

FILED 3/17/2025 3:39 PM
CC-20-2025-C-302Kanawha County Circuit Clerk
Cathy S. Gatson

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305

**Kris Warner**

Secretary of State
State of West Virginia
Phone: 304-558-6000
886-767-8683
Visit us online:
www.wvsos.com

CLERK OF KANAWHA COUNTY CIRCUIT COURT
PO BOX 2351
Charleston, WV 25328-2351

Control Number: 337474

Defendant: MICROBAC LABORATORIES, INC.
808 GREENBRIER STREET
Charleston, WV 25311 US

Agent: Corporation Service Company**County:** Kanawha**Civil Action:** 25-C-302**Certified Number:** 92148901125134100004106206**Service Date:** 3/11/2025

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris Warner", written over a horizontal line.

Kris Warner
Secretary of State

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

NOTICE TO: Microbac Laboratories, Inc., c/o Terri Cox, 101 Bellevue Road, Suite 301, Pittsburgh, PA 15229

SERVICE:

3/4/2025 4:46:49 PM

Date _____

/s/ Cathy S. Gatson

Clerk (55)

RETURN ON SERVICE:

Date _____

Server's Signature

2025 MAR 11 A 10:00
 DEPT OF STATE
 OFFICE OF WEST VIRGINIA



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c/o Terri Cox
101 Bellevue Road, Suite 301
Pittsburgh, PA 15229

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